

**Town of Milford  
Zoning Board of Adjustment Minutes  
June 5, 2014  
Case #2014-08  
Nathan and Brooke Langlais  
Equitable Waiver**

Present: Fletcher Seagroves  
Laura Horning – Vice Chairman  
Mike Thornton  
Joan Dargie  
Len Harten

Katherine Bauer – Board of Selectmen representative

Excused: Zach Tripp

Secretary: Peg Ouellette

The applicant, Nathan and Brooke Langlais, owners of Map 29, Lot 164, located at 9 Willow Street, in the Residence A District, are requesting an equitable waiver of dimensional requirements from Article V, Section 5.02.5:B, for a deck constructed four (4) feet +/- from the side setback line where fifteen (15) feet is required, in accordance with Article X, Section 10.07.0

**Minutes approved on September 4, 2014**

F. Seagroves was voted as Chair Pro tem by unanimous vote of the Board. He opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes and continued by informing all of the procedures of the Board; he then introduced the Board and read the notice of hearing into the record. P. Ouellette read the list of abutters into the record. Applicant/owner Nathan Langlais and presenter Robert Todd were present. Abutters present: Peter McLaughlin of 11 Willow St. Milford, Aaron Kaplan of 14 Adams St. Milford, and Carl Roebuck of 8 Willow St.

F. Seagroves asked the applicant to present his case.

Nathan Langlais came forward with Robert Todd.

R. Todd, Todd Land Use Consultants introduced himself and said he was there to help Nathan Langlais, one of the owners who lives on the property in one of the units. The 4,000 +/- SF lot is 68' x 111'. The existing building already occupies a substantial section of the setback area and

since the home was built around 1900, it was grandfathered. He described the building and the property shown on the plan dated 1/28/14. The structure, built in violation of the setback and in the building permit process, doesn't encroach or approach closer to the property line than the corner of the main house and it doesn't extend to the other setbacks. The stairs will be removed because the functionality is lacking and can't be used without stepping on the neighbor's land. The applicant and family have the right to park anywhere within gray shaded area on the plan. The other building has access to parking through a deed easement; it is common use paved area. The recent survey shows that the other neighbor extends over the property boundary approximately three ft in one section. The applicant would like to be able to maintain and use the structure that has been so nicely built.

F. Seagroves asked for questions from the Board.

M. Thornton asked about a building permit and said if he would have filed a building permit he would not have come up against this, at least not going backwards.

N. Langlais confirmed that he didn't get one.

F. Seagroves said the deck follows the house footprint and is no closer to the setback.

M. Thornton said the footprint to the rear wasn't an issue and to the side setback was no worse than the house.

L. Harten asked if the deck stairs will be removed?

R. Todd said even the applicant didn't like them because they weren't functional and when he goes down them he walks on the neighbor's land; they have to be removed.

J. Dargie said she didn't see #7 Willow listed in the abutters list.

L. Horning asked if they were notified.

Aaron Kaplan, trustee of the trust that owns the rental property at 7 Willow St, was present and stated he was notified, by certified letter.

F. Seagroves opened meeting for public comment.

A. Kaplan stated he was here to object to the granting of this equitable waiver. Not only does the applicant not meet any of the four requirements but if this were granted it would significantly impact the value of his property negatively. The applicant's paperwork stating how violation was discovered was not truthful; which stated *..... reasonably assuming his existing house was a legitimate structure, he built the deck no closer to the property sideline than the existing non-conforming house*. This was not true because the stairs as you mentioned come right to the property line. The only reason that removing the stairs was mentioned was to make it more likely that the Board would allow this. It didn't go through the proper permit process that the Applicant's answer is a claim of ignorance of the law. I can show that he didn't take out a permit, but that he was familiar with the permit process. This is a brand new, sizeable addition, that they minimize by the way that they describe it, but it's about a 400 square foot deck. It's noticeable even from the street. He was familiar with the permit process, because in 2009, he took out a permit that I believe is expired or was never resolved, for roof, kitchen, and bathroom remodel. In 2010 and in 2011, that permit expired, which he renewed in both years. He was in constant contact with the building department, and had ample opportunity ask about a deck. The paperwork filled out previously even had checkboxes right on it for decks, sheds, additions. There was no excuse for not taking out a permit for the deck, as he had seen paperwork exactly like this before... In November of 2013, the Town posted a stop work order, a notice of violation at the property, but not just for the back deck. It was also for a front porch done without a permit, and also an overhang constructed without a permit. All of these were constructed without permits, it's not just this one deck. I believe that shows that it's a case of obfuscation, hiding it, not coming forward and wanting to take out a permit. Not because of a mistake in measurements, but because he knew that it would probably not be allowed. The applicant filed a permit in 2011 after the notice of violation for a 27x14 deck. It is very large and the plan showing his house wasn't accurate. The plans, which were made after this violation notice, show 10-12 ft to the property line; that was not even close. There is a steel post in the ground marking that back corner, so you would have to assume

the applicant went across a portion of our property to get that 10-12 ft. Also, they removed a portion of fence that was on our property. The violation notice was dated January 30, 2014 and since the new deck plus new roof over the fuel tank were in the setback, they needed to be removed or they would have to apply for an exception, which he chose to do. This was not a case of simple miscalculation. Reiterating that this will adversely affect my property, he said the deck is closer than any other part of the structure to our bedrooms...He can mitigate his losses, he can change the deck, he can move it, he can mitigate his damages by reusing the lumber. We cannot mitigate our damages. Once that's there, if this goes through, there is nothing that we can do, but I can't mitigate my own loss. The violation constitutes a public and private nuisance and is not unobtrusive. My property value will be diminished and my only recourse is to try to stop this at this meeting. A. Kaplan submitted photos and documentation to the Board.

L. Horning asked what was removed.

A. Kaplan said some fencing and bushes.

L. Horning asked what type of fence.

N. Langlais said it was chicken wire.

A. Kaplan said it was there, more or less, to delineate between the property and the bushes acted as a buffer for privacy. That was ripped out and there is demo material stored there.

A. Kaplan said he had something from town records that the footprint on the plan was not accurate.

L. Horning ended a brief discussion on property access by saying it was not relevant to this case.

Peter McLaughlin of 11 Willow St, next door neighbor to applicant said Mr. Kaplan brought out several points that were true, but some things were left out. Nate purchased the property as is and the house had major issues. He spent the last five years making major renovations. Mr. Kaplan claimed the improvements negatively impacted his property, but I felt the opposite. The property was worth more than when it was purchased in 2009, which would positively impact Mr. Kaplan. Regarding Mr. Kaplan's claim that Mr. Langlais made improvements to his front deck. This wasn't true. The front two portions of the property are in line with had already been there. Regarding Mr. Kaplan's claim that the deck impedes his property and his use of it, it should be noted that Mr. Kaplan's tenants are driving onto the Langlais property to access the driveway.

L. Horning asked if it was a shared easement and if it was deeded?

P. McLaughlin said he wasn't sure, it is a gravel driveway to Willow St. Mr. Kaplan assumed it was his property but when the surveying work was done, part of that land Mr. Kaplan had been using for the last seven years belonged to Mr. Langlais.

L. Horning asked if that was the only access to 7 Willow and how long had it been there? She was trying to determine how they are getting to the houses.

P. McLaughlin understood that the gravel goes onto Mr. Langlais' and Mr. Kaplan's property to access Mr. Kaplan's property. His point was if they were there to refute the deck they should also point out that Mr. Kaplan is using Mr. Langlais' property to access his property.

L. Horning said they were here for the deck, so the use of the driveway isn't relevant.

A. Kaplan wanted to respond about the statement on the front porch, that there was no violation. He got information about violation notice and work without permits which lists work on the front and back deck and the overhang. There were at least three violations. He said he had that from the Building Department and Building Inspector. He was trying to show bad faith. He said he could show copies of paperwork.

F. Seagroves closed the public portion of the meeting.

R. Todd read the application into the record:

**1. Explain how the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.**

From observation of the many decks and porches within the neighborhood, the land owner

assumed he would be allowed to enjoy the use of his back yard by attaching a deck to the house, consistent with those he observed. Also, reasonably assuming that his existing house was a legitimate structure, he built the deck no closer to the property sideline than the existing non-conforming house. R. Todd referred to a document showing lots in the neighborhood that have decks, but said he didn't measure them.

**2. Explain how the violation was not an outcome of ignorance of the law or Ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner or owner's agent or representative but instead was caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in Ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority:**

As an agent he wasn't involved in this until it was done. The land owner, in good faith, reasonably calculated that the existing house met any required side setbacks, and the new deck was well within the rear setback.

**3. Explain how the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future use of any such property:**

The specific site is an appropriate location for the proposed use because the majority of homes in the neighborhood have decks or porches to supplement and complement the use of their homes and yards. The use as developed will not adversely affect the adjacent area because the neighborhood primarily consists of residential structures with similar decks and porches. A survey of the neighboring homes showed that 24 out of 29 homes have at least one porch or deck (see attached list). The deck has been built unobtrusively into a corner of the house. The westerly side of the deck does not extend toward lot lines more than the existing house; this existing side of the house is within the 15-foot side setback. The southerly side of the deck extends toward the rear lot line nor more than 4 feet from the existing house and is well away from the 15-foot rear setback line. There will be no nuisance or serious hazard to vehicles or pedestrians because the deck is at the back of the house with no access by setbacks or public pedestrians. The proposed use is similar to those existing in the district because the subject lot is located in the Residence "A" District. An equitable Waiver is being requested because a deck has been built onto an existing non-conforming two-family residential structure. The sole purpose of the deck is to create a space for the families to use and enjoy reasonably and equitably as have many of their neighbors. The applicant offers to remove the steps that are attached to the west side of the deck.

**4. Explain how, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected:**

The cost of correction would be excessive and inequitable because there is no public benefit whatsoever to be gained. The value of the applicant's house has increased, uplifting the neighborhood, and the abutters' property values have not been diminished by the degree of construction so popular in the area. Real estate appraisers look at surrounding buildings and land uses, and if they came to this house and adjoining homes they would see that most of the neighborhood had the benefit of such structures.

F. Seagroves asked for questions from the Board.

M. Thornton said he didn't think anybody was trying to deprive him of the pleasure of having a deck, only trying to say that he failed to get a permit and then building a non-conforming deck. He was surprised that with his background in improving the area the applicant wasn't familiar with the need for a permit. Had he done that, he could have avoided this issue and built the deck out to the back where they wouldn't have had a setback issue.

L. Horning asked how Mr. Todd did his research about the other decks.

R. Todd said his research assistant went on-line and got descriptions of the structures on those lots. L. Horning said all of them had decks and pointed out that they would come by that information because permits were filed.

J. Dargie asked the difference between the ordinance or article they were looking at because there was no permit filed. Were they addressing the fact there was no permit filed?

F. Seagroves said yes.

There was discussion among members as to where in the ordinance it was covered.

L. Horning asked Mr. Todd if there was a formal appraisal done on the property.

R. Todd said he just was just speaking from his training, has no knowledge about an appraisal.

There was discussion among Board members about finding equitable relief or waiver.

M. Thornton commented that in reading the request, he kept seeing "in good faith" repeated but he didn't feel good faith because applicant had had a lot of experience doing improvements and had been told to get a building permit. He didn't see that other people having decks were relevant to having a non-conforming deck.

Chairman Seagroves states to Nathan Langlais: Sorry we have to do this, but I think it's better for you.

F. Seagroves moved on to voting on the criteria.

**1. That the violation was not noticed or discovered until after a structure in violation had been substantially completed or until after a lot had been sub-divided by the conveyance.**

L. Horning had a problem with this because it was clear the applicant had filed for permits before and was aware of the permitting process. She understood doing home improvements and desire to improve his property but in looking from a factual perspective, he was aware of the permit process, he had permits in place prior to this deck building. He had the property for enough time, having done the other projects. Time wasn't an issue and he wasn't rushed, which is what the question infers to, so on this question, she had to say no.

F. Seagroves said he would like to have further information from the office about these violations that were brought up by an abutter.

There was brief discussion among members about tabling the case until they could get that information and the need for more evidence from the office, with there being no notes from the office.

M. Thornton moved to table the case until they could get more information from Mr. Parker.

J. Dargie seconded for discussion and clarified information from the office.

All voted in favor.

R. Todd asked if it would be tabled to a date definite.

F. Seagroves said until the next meeting, on June 19.

A. Kaplan was concerned about whether public comment would be allowed.

F. Seagroves said yes, it would be allowed.